

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

TAREEK HEMINGWAY,)
)
Plaintiff,)
)
vs.) Civil Action No. 3:22-cv-30
) Judge Stephanie L. Haines
HOLLIDAYSBURG, PA, *et al.*)
)
Defendants.)

MEMORANDUM ORDER

This is a civil rights case brought by Tareek Hemingway (“Plaintiff”) relating to abuse he allegedly received while incarcerated as a pretrial detainee at Cambria County Prison. This matter was referred to Magistrate Judge Keith A. Pesto for proceedings in accordance with the Federal Magistrates Act, 28 U.S.C. § 636, and Local Civil Rule 72.D.

Plaintiff commenced this action by filing a motion for leave to proceed in forma pauperis that attached a civil complaint (ECF No. 1). Plaintiff’s Complaint names Hollidaysburg PA/ Blair County, Blair County Prison, Blair County Prison Board, Corrections Officer Maria Furio, Blair County Prison Warden Abby Tate, Corrections Officer Musslemen, and Corrections Officer Mark Yingling as defendants (ECF No. 5). On March 7, 2022, Magistrate Judge Pesto issued a Report and Recommendation (ECF No. 7) recommending all Defendants except Defendant Furio be dismissed from the Complaint for failure to state a claim, but that Plaintiff be permitted leave to amend his claims as to those dismissed Defendants. Pursuant to that recommendation, on March 14, 2022, Plaintiff then filed an Amendment of Complaint (ECF No. 8) to assert additional allegations against the dismissed Defendants. On March 18, 2022, Magistrate Judge Pesto issued a Report and Recommendation (ECF No. 9) which recommends Plaintiff’s Complaint (ECF No.

5) and Amendment of Complaint (ECF No. 8) be served on Defendant Furio but that the remainder of the Defendants be dismissed with prejudice. Plaintiff was notified he had fourteen days to file objections to Magistrate Judge Pesto's Report and Recommendation (ECF No. 9) pursuant to 28 U.S.C. §636 (b)(1). To date, no party has filed objections, and the time to do so has expired.

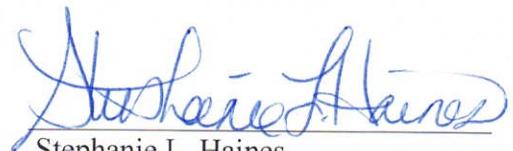
After a review of the documents of record in this matter and the Report and Recommendation (ECF No. 9) under the "reasoned consideration" standard, *see EEOC V. City of Long Branch*, 866 F.3d 93, 100 (3d Cir. 2017) (standard of review when no timely and specific objections are filed), the Court will accept in whole the findings and recommendations of Magistrate Judge Pesto in this matter. Magistrate Judge Pesto correctly determined Plaintiff's conclusory allegations against Defendants Tate, Blair County Prison Board and Blair County fail to state a civil rights claim. Magistrate Judge Pesto also correctly found Plaintiff failed to state a retaliation claim against Corrections Officers Yingling and Musslemen. *See Rauser v. Horn*, 241 F.3d 330, 333 (3d Cir. 2001); *Mitchell v. Horn*, 318 F.3d 523, 530 (3d Cir. 2003). Lastly, Magistrate Judge Pesto appropriately determined that further amendment of Plaintiff's claims against these Defendants would be inequitable and futile. *See Grayson v. Mayview State Hosp.*, 293 F.3d 103, 114 (3d Cir. 2002).

Accordingly, the following order is entered:

ORDER

AND NOW, this 22nd day of April, 2022, for the reasons set forth in Magistrate Judge Pesto's Report and Recommendation (ECF No. 9), which is hereby adopted as the Opinion of this Court, IT IS HEREBY ORDERED that Plaintiff's Complaint (ECF No. 5) and Amendment of Complaint (ECF No. 8) shall be served on Defendant Furio only; and,

IT IS FURTHER ORDERED that Plaintiff's claims against Defendants Hollidaysburg, PA/Blair County, Blair County Prison, Blair County Prison Board, Abby Tate, Musslemen, and Mark Yingling are hereby DISMISSED WITH PREJUDICE. The clerk is ordered to terminate this matter as to those Defendants.



Stephanie L. Haines
United States District Judge